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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,641	09/30/2003	Andrew J. Wanie	845.001	6077
23598	7590	08/05/2005	EXAMINER	
BOYLE FREDRICKSON NEWHOLM STEIN & GRATZ, S.C.			STONE, JENNIFER A	
250 E. WISCONSIN AVENUE				
SUITE 1030			ART UNIT	
MILWAUKEE, WI 53202			PAPER NUMBER	
			2636	

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**Application No. ~~10~~

10/675,641

Applicant(s)

WANIE, ANDREW J.

Examiner

Jennifer A. Stone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7 is/are allowed.
- 6) ☒ Claim(s) 8 and 22 is/are rejected.
- 7) ☒ Claim(s) 9-21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to provide a clear illustration of the invention as described in the specification. Examiner cannot determine the numbers that match the appropriate components in Figures 8, 9, 10, 11, 12, 13, 15, 16, 18, and 19 (the drawings are too dark). Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Rak (US 5,239,285).

Rak discloses a device for sensing a level of a substance in a container (col 1, lns 5-7), comprising: (a) a predetermined level of a substance including solid salt and water (col 2, lns 33-35; col 3, lns 63-68); (b) a sensor for detecting when the substance reaches the predetermined level (col 4 lns 7-10 and 30-32; Fig. 1, items 16 and 20; (c) an alarm remotely triggered by the sensor when the predetermined level is reached (col 2, lns 36-38; col 3, lns 45-52; col 5, lns 2-7).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hafer (US 2002/0178808) and further in view of McEwan (US 5,832,772).

For claim 8, Hafer discloses a device for monitoring the level of a substance through a wall of a container, the device comprising a first sensing member positionable on the container adjacent a lower end of the container (paragraph 0002, Ins 1 and 2; parag 0019, Ins 7-14; Fig. 1, item 11), the first sensing member including a first housing securable to the container (Fig. 1, item 11), a first detecting mechanism positioned within the housing (the probe is considered to be within the housing and penetrates the walls of the container), an alarm mechanism operably connected to the first detecting mechanism (parag. 0014; parag 0048, Ins 3-8; Fig. 2, item 40), and a first power supply operably connected to the first detecting mechanism and the alarm mechanism (parag 0021, Ins 1-7). However, Hafer does not sense through the wall of the container without physically penetrating the container wall. McEwan, on the other hand, discloses this feature (col 1, Ins 49-53; col 2, Ins 51-53; col 5, Ins 44-54; Fig. 3). It would have been obvious to use a sensing mechanism that does not penetrate the walls of the container to lessen the chance of leaks due to the penetrations.

***Allowable Subject Matter***

6. Claims 1-7 are allowed.

7. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Remarks***

8. Applicant's arguments filed June 29, 2005 have been fully considered but the following are not persuasive.

The Applicant argues as follows:

- a. For claim 22, Rak is not used to sensor the level of solid salt and water, but to sensor brine level. Rak teaches away from a device used to sense solid water and salt.
- b. For claim 8, Hafer would be impractical and possibly inoperable due to salt particle residue.

a. Rak clearly discloses a sensor that monitors the level of solid salt and water (col 3, lns 63-68; col 4, ln 1). In no way does Rak (col 1, lns 53-66) teach away from a device used to sense solid salt and water; Rak merely describes a previous method (and completely unrelated to the Rak invention) that falsely indicates the level of solid salt.

b. The impracticality of Hafer is irrelevant. In addition, there is no definitive evidence that salt residue would render the sensors inoperable.

9. Applicant's arguments, see Remarks, pages 6 and 7, filed June 29, 2005, with respect to claims 1 and 9 have been fully considered and are persuasive. The rejections of claims 1 and 9 have been withdrawn.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Stone whose telephone number is (571) 272.2976. The examiner can normally be reached on M-F from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Hofsass, can be reached at (571) 272.2981. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Jennifer Stone

July 25, 2005

A handwritten signature in black ink, reading "Brent Swarthout". The signature is written in a cursive, flowing style.

**BRENT A. SWARTHOUT  
PRIMARY EXAMINER**